



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Consolidated Bell, Inc.

File: B-228492

Date: February 19, 1988

DIGEST

A protester has not carried its burden proving that during discussions the agency misled it, where the protester's version of the advice it received is less persuasive than the agency's version of the advice, the alleged advice was inconsistent with the RFP, and the protester specifically confirmed that portion of its proposal, to which the alleged advice was directed, after receipt of best and final offers.

DECISION

Consolidated Bell, Inc. (CBI), protests the award of a contract to Amerinex Services Corporation under request for proposals (RFP) No. KECI-87-039 issued by the General Services Administration (GSA). The RFP sought unit prices for an indefinite quantity of personal computers and their monthly maintenance. CBI claims that due to its reliance upon statements by a GSA contracting specialist, it mistakenly offered too high a price for the maintenance and its correct offer would be the lowest. Therefore, CBI alleges that it is entitled to the award.

We deny the protest.

The RFP guaranteed that a minimum of 20 computers and a maximum of 70 would be purchased. The contract period was from date of award until September 30, 1987, with annual renewal options not to exceed the 24-month system life of the computers measured from when they are installed. All offerors were required to provide a 90 day or manufacturer's standard warranty covering parts and labor as well as maintenance for the contract period.

CBI's price proposals were confusing and GSA repeatedly contacted CBI to obtain clarifications. Despite these discussions, CBI's best and final offer (BAFO) still did not comply with the RFP instructions. Specifically, no monthly maintenance charge was quoted as required by the RFP. This

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was one of the problems noted in CBI's earlier proposals and discussed by GSA.

CBI's BAFO quoted a unit price of \$2,994 for 20 units and \$2,794 for 70 units, with a 1-year warranty. In the alternative, CBI's BAFO also proposed a 3-year warranty that was priced \$500 more than the 1-year warranty. No separate maintenance prices were provided.

After receiving CBI's BAFO, GSA's contract specialist telephoned CBI and requested unit prices for monthly maintenance. CBI responded that its 1-year warranty, 20 unit price was \$2,994, and its monthly maintenance price was \$20.83 per unit. A representative of CBI visited GSA the next day and completed pricing tables for its BAFO reflecting the figures CBI had furnished GSA in the foregoing telephone conversation. Using these figures GSA calculated a system life price of \$221,972 which placed CBI as the seventh low offeror.

A contract was awarded to Amerinex, which submitted a BAFO unit price of \$2,119.03 for hardware and a \$38.50 per month unit maintenance price. Amerinex's system life price was calculated to be \$200,919.

In its protest, CBI explains that its \$500 extra charge for a 3-year warranty was mistakenly translated by GSA into a \$20.83 per month maintenance charge over the 2-year system life. CBI explains that while the monthly charge would be correct for a 3-year system life, its 2-year warranty is worth only \$50 per unit and the remaining \$450 per unit is attributable to the third year of its 3-year warranty.

CBI contends that GSA's representative misled it into quoting a 3-year warranty. According to CBI, it asked the GSA contract specialist if the 24-month system life referenced in the RFP included its 1-year warranty. CBI claims that upon receiving a negative response, CBI concluded that the 24-month system life, in addition to a 1-year warranty, required it to offer a 3-year warranty. Since CBI brought this matter to the government's attention prior to award, it maintains that discussions should have been reopened to resolve the issue. In this regard, CBI claims that if its maintenance charge were properly allocated, its total price would have been \$199,680, the lowest evaluated price.

GSA denies that it misled CBI. According to GSA, when CBI asked whether the acquisition was for 2 or 3 years, the contract specialist replied that the RFP required a 24-month system life and a 90-day warranty. When CBI began to inquire about 2 and 3 year warranties, the contract

specialist referred CBI to the RFP and advised it to respond accordingly.

We find that CBI has not sustained its burden to prove that GSA misled it to make a mistake in its BAFO; indeed, for a number of reasons, CBI's version of the facts is less persuasive than GSA's version. See SWD Associates, B-226956, July 17, 1987, 87-2 CPD ¶ 55.

First, the evidence tendered by CBI to support its version of the telephone conversation, which allegedly misled it, is unpersuasive. The supporting affidavit of CBI's "legal assistant" only states, without elaboration, that the GSA and CBI representatives "discussed and understood that the specifications . . . required the offerors to bid on a 3-year warranty." Moreover, although CBI claims that it recorded the conversation, it has not tendered any copy or transcript of this recording.

Second, the alleged advice is inconsistent with the RFP. The RFP required unit prices for hardware and maintenance based upon a 2-year system life, but maintenance prices were not solicited until the end of the 90-day warranty period. The term "systems life" clearly includes any pertinent warranty period. Federal Information Resources Management Regulation, 41 C.F.R. § 201-2.001 (1986). Since the contract period was for the 24-month "systems life" of the hardware, a 3-year warranty is clearly not required by the RFP. Where, as here, a solicitation expressly cautions offerors against relying upon oral advice from agency personnel, offerors who ignore the admonition, and rely upon alleged erroneous advice which conflicts with specific language in the solicitation, must suffer the consequences. Thus, even if CBI was misled to its detriment, such alleged erroneous advice neither binds GSA nor requires the submission of new offers. Tri-State Laundry Services, Inc. d/b/a/ Holzberg's Launderers and Cleaners, B-218042, Feb. 1, 1985, 85-1 CPD ¶ 127; Inventive Packaging Corp., B-213439, Nov. 8, 1983, 83-2 CPD ¶ 544.

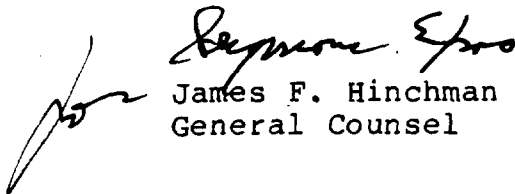
Third, after submitting its BAFO, CBI specifically clarified on the pricing sheets its maintenance charge as being \$20.83 per month, which was the figure used by GSA in determining CBI's evaluated price. This casts considerable doubt on CBI's claim that it was misled.

Fourth, CBI's \$20.83 per month maintenance charge is consistent with CBI's earlier proposals so no mistake is indicated. Indeed, CBI's BAFO price for maintenance was approximately one-half the price of its previous maintenance price as well as the maintenance price of the awardee.

There is no basis in the record to accept CBI's belated explanation that its true maintenance cost is \$50 per year per unit. CBI was repeatedly informed of the necessity of furnishing monthly maintenance prices as distinguished from its offered warranties. When CBI asked about warranties, it was referred to the RFP for guidance. As there is no indication that CBI was misled by GSA, any mistake by CBI is due to its own misinterpretation of the RFP.

Under such circumstances, where there is no indication in the record that GSA lacked sufficient information on which to evaluate the offers, CBI has not shown that it was in GSA's best interests to reopen negotiations. See Federal Acquisition Regulation § 15.611(c) (FAC 84-16).

The protest is denied.



James F. Hinchman
General Counsel